

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

CRAIG CUNNINGHAM,

Plaintiff,

-vs-

Case No. 16-CV-761-JDP

MICHAEL MONTES,
TOLLFREEZONE.COM, INC.,
MYDATAGUYS.COM, LLC,
PODMUSICGEAR.COM, INC.,
EMAILMYVMAIL.COM, INC.,
and JOHN/JANE DOE 1-10,

Madison, Wisconsin
July 18, 2017
8:08 a.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF DEFAULT HEARING
HELD BEFORE THE HONORABLE JAMES D. PETERSON,

APPEARANCES:

For the Plaintiff:

BY: CRAIG CUNNINGHAM, pro se

For the Defendant:

Axley Brynelson
BY: KEVIN TROST
2 East Mifflin Street, Ste. 200
Madison, Wisconsin 53703

Lynette Swenson RMR, CRR, CRC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 420
Madison, Wisconsin 53703

1 (Proceedings called to order.)

2 THE CLERK: Case No. 16-CV-761. *Craig*
3 *Cunningham v. Michael Montes, et al.* called for a default
4 hearing. May we have the appearances, please.

5 MR. CUNNINGHAM: I'm Craig Cunningham, the
6 plaintiff.

7 THE COURT: Good morning, Mr. Cunningham.

8 MR. CUNNINGHAM: Morning, Your Honor.

9 MR. TROST: Good morning. Kevin Trost appearing
10 for the defense.

11 THE COURT: Mr. Trost, good morning to you.

12 MR. TROST: Good morning, Your Honor.

13 THE COURT: Okay. So you can correct me if I'm
14 wrong, but I think the way we left this was that I had
15 determined that service had been properly made. I had
16 some questions about whether personal jurisdiction over
17 the defendants was appropriate and so I asked Mr. Montes
18 to submit to me an affidavit with some other materials
19 with information that would go to the question of
20 personal jurisdiction. And so I guess I have a couple of
21 questions about the affidavit materials that Mr. Trost
22 can address perhaps and then I'll find out if
23 Mr. Cunningham finds any of the materials that were
24 submitted to be informative at all.

25 First, so the property in Somerset is, in kind of

1 common sense terms, really is owned by Mr. Montes and his
2 wife, although it's held in trust. They're the settlers
3 and the beneficiaries of the trust; is that right?

4 MR. TROST: Yeah, I think that's how they
5 answered the --

6 THE COURT: Yeah. Now, let me ask this: Who's
7 the trustee of the trust? Do you know that? I didn't
8 specifically ask that.

9 MR. TROST: I do not personally know.

10 THE COURT: Okay. And Mr. Montes didn't tell
11 you?

12 MR. TROST: No.

13 THE COURT: And what do you know about the
14 business? Now, he identifies it as his wife running the
15 event business.

16 MR. TROST: Right. That's how he described it
17 to me as well, that his wife runs this event business.
18 It's kind of a rural farm setting and they rent it out
19 for weddings or parties, that type of thing.

20 THE COURT: All right.

21 MR. TROST: And his wife does the catering for
22 it.

23 THE COURT: Okay. So really he then supplies
24 the real estate that's used for the business.

25 MR. TROST: Well, I think it's, you know, the

1 trust is regards both of them.

2 THE COURT: Yeah. So they own it, but he is one
3 of the owners of the real estate that's provided for this
4 business. Where does he stay when they live -- when they
5 are in Wisconsin? Did he tell you that?

6 MR. TROST: I believe they stay at the farmhouse
7 that is on the property.

8 THE COURT: Okay. All right. Mr. Cunningham,
9 you tell me if you find anything informative in the -- I
10 will tell you this: I took a very quick look at the
11 massive Facebook posts. I think they're in there
12 because -- and you can clarify this for me. My
13 understanding is that the Facebook information is what
14 led you to the Somerset, Wisconsin, address for
15 Mr. Montes; is that right?

16 MR. CUNNINGHAM: That's right in part, Your
17 Honor. It's tieing Montes down to the Somerset property.
18 I know he has two houses, one in California and one in
19 Wisconsin. I know he splits time there. But to say on
20 this date or from this time frame to this time frame I
21 was in Wisconsin, I was definitely in Wisconsin, that's
22 kind of a different thing, you know, as opposed to saying
23 well, I'm here or there from various times. So that was
24 part of the motivation with that.

25 It did --

1 THE COURT: How did you find out that he had the
2 California house?

3 MR. CUNNINGHAM: Your Honor, I've been doing
4 research on Mike Montes for over a year. I've been in
5 contact with other litigants that have tried to sue him,
6 tried to serve him at the San Juan, Capistrano address;
7 spoken with private investigators who have gone to the
8 Capistrano address. I have an affidavit from them. I
9 know for a fact, for example, that the San Juan,
10 Capistrano address in California is listed on Vacation
11 Rental by Owner right now. So if you want to take a week
12 in California, you could go lease that place right now.
13 So these are the kind of things that lead to questions of
14 if he's not staying in Wisconsin, and I tried to serve
15 him there and wasn't successful, and he's not staying at
16 the California address, which is for rent, then where's
17 he staying?

18 THE COURT: All right. Okay. So I think I get
19 your position is that there -- well, why don't you tell
20 me. What's your position about whether there's personal
21 jurisdiction over him in Wisconsin?

22 MR. CUNNINGHAM: Well, Your Honor, there is
23 definitely personal jurisdiction, certainly for his
24 presence in years past.

25 THE COURT: Is that the same file -- you just

1 gave Mr. Trost a file. Is that the same file that was
2 sitting on the bench here?

3 MR. CUNNINGHAM: Yes, Your Honor, that's
4 correct.

5 THE COURT: Tell me what's in that, because I'm
6 not going to review it all right now. Just tell me
7 what's in there and what I ought to look at.

8 MR. CUNNINGHAM: First thing I would look at is
9 a bank report. It is from Mike Montes's bank records.
10 It is from January 2015 through February 2016. It
11 runs --

12 THE COURT: It's going to take me a minute to
13 find that. So I've got all these pictures of these kids
14 wearing football uniforms.

15 MR. CUNNINGHAM: Oh, yes. We'll -- I'll get to
16 that. I should put it in order. It's an Excel
17 spreadsheet.

18 THE COURT: Okay, just give me a minute here.
19 Okay. So I've got a -- I'm going to hold it up. I don't
20 know if you can see this far.

21 MR. CUNNINGHAM: That's it.

22 THE COURT: Okay.

23 MR. CUNNINGHAM: So those are specific payments
24 stripped out that I looked at in and around Wisconsin.
25 For example, utility payments --

1 THE COURT: And what accounts are these from?

2 MR. CUNNINGHAM: It's from the Tollfreezone.com
3 bank account.

4 THE COURT: All right. Okay. And how did you
5 get that?

6 MR. CUNNINGHAM: I sent a subpoena to his bank.

7 THE COURT: Okay. All right. Okay. So go
8 ahead. Now I know what it is. Now tell me what it tells
9 me.

10 MR. CUNNINGHAM: So you have, just point to one,
11 Eckroth Music is a music store rental in Wisconsin. They
12 rent instruments, the kind of instruments that kids would
13 play at a school recital. And there are pictures from
14 Mike Montes's -- one of his other social media --
15 apparently Mike Montes likes to -- he's kind of an
16 amateur photographer, so he likes to take pictures. So
17 he's got all kinds of pictures on there, dated as well,
18 from his kids at a music recital in Wisconsin. So the
19 kid's going to school here.

20 You have regular church contributions, for example,
21 to a local church in Wisconsin that he goes to; ATM
22 deposits; ATM withdrawals; purchases at grocery stores,
23 the kinds of things that you would do if you lived at a
24 place.

25 THE COURT: Well, I'd also buy groceries if I

1 was vacationing at a place.

2 MR. CUNNINGHAM: True. But they're on there
3 every month, you know, for a year plus. Walgreens,
4 getting eyeglasses. Getting -- going to the gas station.
5 Going to restaurants. Just typical stuff that are
6 consistently on there month after month for over a year.
7 I totaled the purchases or transactions. It was over
8 \$93,000 in over 240 transactions in and around
9 Wisconsin --

10 THE COURT: Okay.

11 MR. CUNNINGHAM: -- for over a year.

12 THE COURT: That doesn't suggest a two-week
13 vacation.

14 MR. CUNNINGHAM: No.

15 THE COURT: Okay.

16 MR. CUNNINGHAM: I've also kind of infiltrated
17 his dialing operation, and on emails that he sends out
18 regularly to his customers -- this is the emails from
19 gmail.

20 THE COURT: Okay. Let me see if I can find
21 that. Okay. That's this one here I'm holding?

22 MR. CUNNINGHAM: Yes, Your Honor. You have --
23 key thing I'd point out is that you have PO Box 26,
24 Somerset, Wisconsin, on the bottom of every email. I
25 have one from January 2017, October 17, 2016, and October

1 5 , 2016 .

2 THE COURT: Okay.

3 MR. CUNNINGHAM: So he is representing to
4 everyone else that he is doing business out of PO Box 26,
5 Wisconsin. If you look at the actual bank statements,
6 those are the thickest, the two thickest ones --

7 THE COURT: Yeah.

8 MR. CUNNINGHAM: -- for Tollfreezone.com,
9 Incorporated, he tells Wells Fargo that it's PO Box 26,
10 Somerset, Wisconsin.

11 THE COURT: Okay.

12 MR. CUNNINGHAM: Every month for a year.

13 THE COURT: And which year is this?

14 MR. CUNNINGHAM: That's 2015 through 2016.

15 THE COURT: All right. What about 2017? Do you
16 have information about that?

17 MR. CUNNINGHAM: I don't have those yet, Your
18 Honor.

19 THE COURT: All right. Okay.

20 MR. CUNNINGHAM: If you look at some of the
21 pictures, you have Mike Montes. I have the one, Somerset
22 Cub Scouts, Pack 144.

23 THE COURT: Okay. I'm going back. Which set of
24 pictures is that?

25 MR. CUNNINGHAM: It's this one should be the

1 first picture of Cub Scouts.

2 THE COURT: First one I've got is a kid holding
3 a platter.

4 MR. CUNNINGHAM: Kid holding a platter. The
5 platter?

6 THE COURT: Yeah.

7 MR. CUNNINGHAM: All right. That is Maverick.
8 I believe that's their son, for Amy's Bistro. That is
9 Amy Montes's catering business.

10 THE COURT: Okay.

11 MR. CUNNINGHAM: And just evidence that they are
12 in and around Wisconsin. Amy has a license for the
13 St. Croix County of Public Health for, I guess, food
14 handling, food service. And I would note that Amy Montes
15 is a corporate officer for Tollfreezone.com, Incorporated
16 as well. So she may do other things, but she is also, at
17 least according to the Secretary of State of California,
18 she is a corporate officer. So she was present and has a
19 business that she operates in and around Wisconsin.

20 THE COURT: All right.

21 MR. CUNNINGHAM: As far as the one with Somerset
22 Elementary --

23 THE COURT: Okay.

24 MR. CUNNINGHAM: -- that is pictures apparently
25 taken by Mike Montes of Somerset Elementary; got some

1 school kids there. Kids are in school; got the teachers.
2 And they're --

3 THE COURT: These are pictures that Mike Montes
4 took.

5 MR. CUNNINGHAM: Yes, Your Honor. It's on his
6 Google social media account.

7 THE COURT: Okay. And we don't know if these
8 are any Montes children in these pictures though; right?

9 MR. CUNNINGHAM: I believe they are. I'm not
10 that great on some of the kids' faces.

11 THE COURT: Okay.

12 MR. CUNNINGHAM: Specifically for the school
13 ones.

14 THE COURT: Okay. So we've got the
15 football-playing kids. What are --

16 MR. CUNNINGHAM: Oh, love football. Just came
17 back from West Point; had a football reunion. Know all
18 about football. Absolutely. Kids playing football, Your
19 Honor. And who are they playing for? They're playing
20 for Somerset.

21 THE COURT: All right. And who are these kids?

22 MR. CUNNINGHAM: 96, that is Maverick. That is
23 Mike Montes's son.

24 THE COURT: And how do you know that?

25 MR. CUNNINGHAM: He is in pictures with them

1 smiling with mom and dad right here.

2 THE COURT: Okay. Where did you get these?

3 MR. CUNNINGHAM: All of these are from his
4 Google. And I have an appendix that lists where you can
5 see them as well.

6 THE COURT: Okay.

7 MR. CUNNINGHAM: But they're all on his Google
8 Places. It's kind of like -- it's Google's attempt at
9 social media. It's not Facebook. They try.

10 THE COURT: I know what it is. All right.

11 Okay.

12 MR. CUNNINGHAM: And there's -- I would note
13 there's kids playing in a band. If I had to guess,
14 probably with Eckroth Music's rented equipment. And
15 there's again another picture of Maverick playing the
16 drums.

17 THE COURT: Okay. All right.

18 MR. CUNNINGHAM: Just trying to hammer home the
19 point that these are not things you do on a transient
20 temporary vacation. Most people don't join churches.
21 Most people don't contribute to churches certainly. Most
22 people don't enroll their kids in Cub Scouts or Little
23 League football, enroll them in school. Those are things
24 that strikes me as a little bit more permanent
25 arrangement.

1 THE COURT: It would seem. All right.

2 Mr. Trost, what's your response to all that?

3 MR. TROST: Well --

4 THE COURT: Bottom line here is that

5 Mr. Cunningham has compiled quite a dossier that suggests
6 that Mr. Montes's family seems to live in Somerset,
7 Wisconsin.

8 MR. TROST: My understanding is that he lives in
9 California and travels to Wisconsin to help his wife deal
10 with events at the Somerset property.

11 THE COURT: Is he separated from his wife?

12 MR. TROST: No. I believe they live together.

13 THE COURT: And then what about the post office,
14 Somerset post office boxes on all the business
15 correspondence as well?

16 MR. TROST: Your Honor, you saw the plaintiff
17 produce this information to me for the first time this
18 morning. This is the first time I've seen it.

19 THE COURT: I've also got to ask, because I
20 asked about the principal place of business of each of
21 the defendant businesses, and the response is all the
22 defendants' businesses are set up for 26961 Via La
23 Mirada, San Juan, Capistrano. Now that doesn't exactly
24 tell me what goes on there, it just says they're set up
25 for that. And so I don't know, seems a little bit

1 evasive and incomplete.

2 MR. TROST: Okay.

3 THE COURT: All right. Here is what I'm going
4 to do: I'm going to find that my concerns over personal
5 jurisdiction have really been amply addressed by the
6 information that Mr. Cunningham has assembled. I think
7 that the declaration of Mr. Montes is informative to an
8 extent, but it still seems evasive in points,
9 particularly in disclosing the principal place of
10 business of his actual businesses. Mr. Cunningham's
11 evidence amply addresses that, I think, when he has bank
12 records that have his Somerset address.

13 MR. TROST: Your Honor.

14 THE COURT: Yes.

15 MR. TROST: I'm sorry to interrupt.

16 THE COURT: Go ahead. You want to make a pitch
17 here?

18 MR. TROST: Well, on that topic there's one
19 thing I wanted to ask and that is what -- I believe he
20 said he received the bank records from a subpoena. I was
21 wondering what case did he subpoena the bank records in.

22 THE COURT: All right. Let's find out. How did
23 you get a subpoena for the bank records?

24 MR. CUNNINGHAM: Your Honor, I have several
25 lawsuits against Mike Montes for a myriad of calls over

1 the years, but it was one of those lawsuits.

2 THE COURT: So we know about the Tennessee case,
3 but just give us --

4 MR. CUNNINGHAM: They're all in Tennessee.

5 THE COURT: Okay. There's a particular case in
6 Tennessee that I'm aware of. Have you got more than two
7 lawsuits?

8 MR. CUNNINGHAM: Yes, Your Honor. There's
9 Cunningham v. Shot Point, Cunningham v. Select Student
10 Loan Help and I have Cunningham v. Telemarketers that I
11 -- so there's four including this one.

12 THE COURT: Okay. So he's got other pieces of
13 litigation.

14 MR. TROST: I just bring it up because I haven't
15 seen any subpoenas in this case with regards to bank
16 records, and frankly, the bank records that I'm seeing
17 here is something, that as an attorney, I'd probably only
18 have access to after I actually had a judgment.

19 MR. CUNNINGHAM: That would be incorrect. Every
20 privacy law I've ever seen, the Fair Credit Reporting
21 Act, FDCPA says subject to subpoena or court order.

22 MR. TROST: Also do you have proof that you gave
23 a copy of the subpoena to Mr. Montes?

24 MR. CUNNINGHAM: I didn't give it to him. I
25 sent it to the address that he lists. And it just

1 reminded me about return mail. I knew you filed a motion
2 talking about well, I should have attempted to serve him
3 at the San Juan, Capistrano address.

4 THE COURT: Address your comments to the Court,
5 if you would.

6 MR. CUNNINGHAM: Oh. Yes, Your Honor. Just the
7 other day he filed a motion about the San Juan -- I
8 should have attempted to serve him at the San Juan,
9 Capistrano address. I did attempt to serve him at the
10 San Juan, Capistrano address. The mail came back
11 returned. I have an affidavit from a private
12 investigator that went there in March 2016, said there
13 was a lock box on the door. No one home. No cars in the
14 driveway. And they spoke to a neighbor; said he --
15 neighbor hasn't seen him in months. He normally resides
16 in Wisconsin. So knowing that -- I mean I still tried to
17 serve him there. The mail came back. That's on file.
18 It's in the packet.

19 THE COURT: I think I've heard enough.

20 Mr. Trost, I'll give you a chance -- I kind of didn't
21 give you a chance to respond generally to the arguments,
22 I just asked some questions. But do you have anything
23 you want to tell me about your client's position here?

24 MR. TROST: I mean honestly the information in
25 the affidavit and declarations is what I think we need to

1 rely on. My arguments are set forth in the brief that I
2 had filed earlier. I don't think there's anything
3 additional that I could tell the Court here that's going
4 to sway the Court's opinion.

5 THE COURT: All right. Here's what I'm going to
6 -- here is what I'm going to do: I will just note a
7 couple of things here. Obviously Mr. Montes is resisting
8 service and he has more or less admitted that. He was
9 contacted by the sheriff and he said you're going to have
10 to hunt me down, and so indeed, that's what
11 Mr. Cunningham has done with great effectiveness as far
12 as I'm concerned. Mr. Cunningham has compiled a dossier
13 that suggests that the presence in Wisconsin, both of
14 Mr. Montes and his businesses, go far beyond what one
15 would expect to do on vacations, the church
16 contributions, having a son play football. Now, I note
17 that's the son, that's not Mr. Montes himself. But since
18 there's no evidence here that they're separated, it
19 really seems that Mr. Montes's family life is in
20 Wisconsin. And I think it is confirmed by the business
21 records that suggest that he has the Somerset, Wisconsin,
22 address is the one that he uses, on at least the business
23 correspondence that we see here, which suggests that his
24 businesses may in some sense be set up to operate in
25 California, but they are, in fact, operated out of

1 Somerset, Wisconsin.

2 I do find that service has appropriately been
3 accomplished here by publication, given the failure of
4 traditional means of personal service. According to the
5 jurisdictional statute in Wisconsin, under 801.05(1)
6 local presence or status, (1)(a) is service is --
7 jurisdiction is appropriate if the defendant is a natural
8 person present within the state when served. Now, we
9 looked at that to see whether that was restricted to
10 personal service. We couldn't find any Wisconsin cases
11 saying that that provision applied only when the
12 defendant was personally served. But I note that service
13 by publication ran from March 9th to 23rd of 2017 and
14 Mr. Montes admits that he was in Wisconsin from March 22
15 to April 5th this year. So he was, in fact, present in
16 Wisconsin during the period when service by publication
17 was made.

18 In addition to that, I think that Mr. Montes has
19 substantial and not isolated activities within this state
20 and therefore personal jurisdiction would also be
21 appropriate under 801.05(d). I'll also point out that
22 those activities include not just his substantial
23 personal life here, suggesting that, in fact, he does
24 live in Wisconsin, but also that they are related to his
25 business because the business records that Mr. Cunningham

1 has produced suggests that he uses the Somerset address
2 for his business activities as well.

3 If I turn to the constitutional dimensions of the
4 analysis, I certainly see, again, substantial and not
5 isolated activities here in Wisconsin by Mr. Montes and I
6 certainly see nothing to suggest that subjecting him to
7 personal jurisdiction in Wisconsin would offend
8 substantial notions of -- or traditional notions of fair
9 play and substantial justice. So I'm comfortable that
10 jurisdiction is appropriate. As I've already indicated
11 last time we were together, I think that service is
12 appropriate and there's no reason for his failure to
13 defend the suit.

14 The only thing that I'm not going to -- so I'm going
15 to find that there is default, there's no reason to set
16 aside the default, and that Mr. Cunningham is entitled to
17 default judgment. The only thing that I'm not going to
18 give Mr. Cunningham complete satisfaction on is the
19 damages amount. I don't know at this point that -- in
20 fact, I do know at this point that I do not have enough
21 evidence for me to determine that the violations of the
22 TCPA were willful. I don't know that I can determine
23 that on the evidence that I have.

24 Accordingly, I'm going to award statutory damages
25 for nonwillful violations of the TCPA, but we do have two

1 separate violations for each -- statutory violations for
2 each phone call. It's not appropriate to award multiple
3 statutory damages awards for multiple regulatory
4 violations, but if separate statutory sections of the
5 TCPA are violated, then the multiple statutory awards are
6 appropriate. So I find that two sections of the TCPA
7 were violated by each of the 176 phone calls, which gives
8 us a statutory damages award then of \$176,000, which is
9 the amount of the award.

10 The costs that Mr. Cunningham is entitled to are the
11 ones that he submitted here are the ones for the filing
12 fee of \$450, which will produce a judgment amount of
13 \$176,450. So that will be the amount of the default
14 judgment against the defendants.

15 I will make the damages award -- the judgment be
16 joint and several liability -- the defendants are joint
17 and severally liable for the judgment amount. And I
18 think that pretty much covers us. Is there anything else
19 I need to do for you, Mr. Cunningham?

20 MR. CUNNINGHAM: Your Honor, I would just ask
21 for an emergency temporary restraining order for any
22 funds in excess of \$10,000 being taken out of those bank
23 accounts.

24 THE COURT: Which bank accounts?

25 MR. CUNNINGHAM: I'm pretty much going to say

1 all of them. There's a listing on the first or second
2 page of the bank records for Wells Fargo.

3 THE COURT: Okay. And so I've got two thick
4 files here of business records, declaration. Which
5 one --

6 MR. CUNNINGHAM: Yes, Your Honor. It's -- I
7 think it's the page right after that.

8 THE COURT: Okay. And then on that, there's
9 page two. That's a two-page document?

10 MR. CUNNINGHAM: Yes, Your Honor.

11 THE COURT: Okay. And so we have two business
12 accounts for the Tollfreezone.com. Is that what we're
13 talking about?

14 MR. CUNNINGHAM: Yes, Your Honor. My other
15 concern is that it will --

16 THE COURT: There's only \$6,000 according to --
17 I mean this is a statement from January, but -- I
18 understand your concern, but you've got to identify for
19 me the accounts that we're talking about.

20 MR. CUNNINGHAM: It's the Tollfreezone.com
21 account. One is a money market, the other is a checking
22 account that has more in-and-out activity. The money
23 market, again, this is dated, but he had over \$50,000,
24 probably 70- or \$80,000 in there. And so just basically
25 over the next 60 days, not more than \$10,000 in total

1 taken out. He has -- in any given month, he would have
2 50- to \$120,000 that would cycle through the
3 Tollfreezone.com bank account. So there may not
4 necessarily be on this day or that day, but generally
5 there's a six-figure amount of money that cycles through
6 that account.

7 THE COURT: Okay. So you want me to basically
8 freeze that account?

9 MR. CUNNINGHAM: Yes, Your Honor.

10 THE COURT: Okay. Mr. Trost.

11 MR. TROST: We would oppose that motion. I
12 don't believe he meets any type of legal or factual
13 standard for a temporary restraining order on any kind of
14 account. We're not even in a situation here where an
15 appeal period has run or a time period has lapsed.

16 THE COURT: I'm not giving him the money, that's
17 clear enough. I'm not going to give Mr. Cunningham the
18 money out of this account immediately. But I am
19 concerned with, given Mr. Montes's history of evasion
20 with respect to the service issue, I'm afraid that he's
21 going to take the money out of the account. It's not his
22 personal account, it's a business account, and the one
23 that he says is involved with the auto dialing business.

24 Okay. Here's what I'm going to do: I'm going to
25 order that the -- any accounts in the name of

1 Tollfreezone are frozen. You can -- Mr. Trost, you can
2 make a motion to release funds from the Tollfreezone
3 account on a showing of necessity if there are business
4 expenses that are reasonable. I'm afraid, based on bank
5 records that I see where we've got church donations and
6 the like coming out of the Tollfreezone account, that
7 this really is not being used strictly for business
8 purposes. So I'm just going to order that the assets of
9 the Tollfreezone accounts at Wells Fargo are frozen and
10 they will be released on a motion showing a necessity of
11 releasing them. But otherwise, Mr. Cunningham has a
12 judgment for a little over \$176,000. This is the
13 business account for the business that's involved in the
14 telephone business, so I think it's appropriate to freeze
15 these assets. But you can make a motion showing the
16 necessity of releasing these funds. But otherwise I
17 think they should be preserved for Mr. Cunningham.

18 I'm not going to release them to Mr. Cunningham
19 certainly at least until the appeal period has run. They
20 may be held in the Court's registry for some time to
21 come, but I'm not going to allow Mr. Montes to spirit
22 them away.

23 MR. CUNNINGHAM: Your Honor, just on the
24 logistics of that as far as getting --

25 THE COURT: I will issue an order. Mr. Trost

1 will, of course, communicate the Court's order to
2 Mr. Montes. But I'll issue a written order today that
3 freezes those accounts. And then if you make a motion to
4 me, I will then order that those funds be paid into the
5 Court's registry. I do want to preserve those funds
6 against any potential appeal of the case or the decision
7 in any way, but I'm interested in preserving them for you
8 but also protecting Mr. Montes's rights should he prevail
9 on an appeal. Okay?

10 MR. CUNNINGHAM: Very good. Thank you, Your
11 Honor.

12 THE COURT: Okay? Anything else?

13 MR. CUNNINGHAM: No, Your Honor.

14 THE COURT: Okay. And is that the only bank
15 account that -- the Wells Fargo bank account is the one
16 you've tracked down for Tollfreezone. I assume if there
17 were other bank accounts, you'd be telling me about them.

18 MR. CUNNINGHAM: Your Honor, he has several bank
19 accounts for some of the other entities there. The
20 Tollfreezone.com is the one that has the most activity.
21 Kind of my other thought is that he might switch his
22 merchant account, which isn't too difficult to do, to one
23 of the other bank accounts.

24 THE COURT: Are they all with Wells Fargo?

25 MR. CUNNINGHAM: Yes, Your Honor.

1 THE COURT: Are you aware of accounts -- I mean
2 if Mr. Montes has a personal account --

3 MR. CUNNINGHAM: Actually --

4 THE COURT: He's got to live somehow so...

5 MR. CUNNINGHAM: Your Honor, I think from what
6 it appears from bank records, he pays most of his
7 personal expenses out of the Tollfreezone.com account.
8 So I'm not going to get into commingling of funds and all
9 that, but I mean that's what it appears to be. I'm not
10 100 percent sure, they seem to be kind of
11 business-related for some of the other accounts which is
12 knowing he has, I think, four or five or six different
13 accounts.

14 THE COURT: All in the name of Tollfreezone.com?

15 MR. CUNNINGHAM: No, Your Honor. They're in the
16 name of some of the other defendants, the corporate
17 entities as well: Podmusicyear and Mydataguys.com, LLC,
18 emailmyvmail.

19 THE COURT: Okay, here's what I'm going to do:
20 Any Wells Fargo account that is in the name of one of the
21 defendants is frozen, subject to the same provisions.
22 And then Mr. Trost can make a motion to release those
23 funds on a showing of necessity. Commonly enough what I
24 would do in a case in which I've got -- sometimes I just
25 have one account for a defendant and I will freeze the

1 account and then allow expenditures of a certain amount
2 out of that account. This is a mess here because we have
3 multiple accounts by corporate defendants, none of them
4 apparently Mr. Montes himself. So I'm going to freeze
5 all of the accounts in the name of the corporate
6 defendants and then, Mr. Trost, you can make a motion.
7 If he's using these for his personal expenses, obviously
8 I'm not going to deprive Mr. Montes and his family of
9 money to pay their grocery bills. But they're being paid
10 out of a corporate account, so you're going to have to
11 make a case of for why I should release a corporate
12 account for that purpose. But I'll be open to that.

13 As I said, he's going to have enough money to pay
14 his expenses, but you're going to have to convince me
15 that I should allow him to take money in a certain
16 limited amount out of these business accounts. But for
17 right now, those business accounts are frozen and then
18 Mr. Trost can make a motion to document it and support
19 it, of course, to release some of those funds as needed
20 by Mr. Montes and his family.

21 All right? With that, you'll get a written order
22 today.

23 MR. CUNNINGHAM: Thank you, Your Honor.

24 (Proceedings concluded at 8:39 a.m.)

25

1 I, LYNETTE SWENSON, Certified Realtime and Merit
2 Reporter in and for the State of Wisconsin, certify that
3 the foregoing is a true and accurate record of the
4 proceedings held on the 18th day of July 2017 before the
5 Honorable James D. Peterson, District Judge for the
6 Western District of Wisconsin, in my presence and reduced
7 to writing in accordance with my stenographic notes made
8 at said time and place.

9 Dated this 19th day of January 2018.

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/s/

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Lynette Swenson, RMR, CRR, CRC
Federal Court Reporter

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